

## Occupational Safety and Health Admin., Labor

## § 1952.313

(c) Implementation of the Management Information System by December 1975.

(d) Complete implementation of the occupational health program by July 1975.

(e) Complete State plan implementation December 1976.

[39 FR 1013, Jan. 4, 1974. Redesignated and amended at 39 FR 44752, Dec. 27, 1974; 40 FR 28792, July 9, 1975. Further redesignated at 49 FR 19192, May 4, 1984]

### § 1952.312 Completion of developmental steps and certification.

(a) In accordance with § 1952.313(i), specific Legislative amendments were enacted by the State Legislature and signed by the Acting Governor on June 7, 1974, and amended by Act 95 of the 1976 Hawaii Legislative Session.

(b) In accordance with § 1952.313(d), as amended, the Hawaii Occupational Health Plan was submitted to the Assistant Secretary on April 16, 1974, and approved on December 20, 1974, incorporating assurances from the State, by letter dated November 19, 1974.

(c) In accordance with § 1952.313(b), as amended, the Hawaii occupational safety and health standards were promulgated on April 18, 22, 23, 24, and 25, 1975.

(d) In accordance with the requirements of 29 CFR 1952.10, the Hawaii State poster was approved by the Assistant Secretary on February 4, 1975.

(e) In accordance with 29 CFR 1952.313(d), as amended, the Hawaii occupational health program was implemented on July 1, 1975.

(f) The Rules of Procedure of the Hawaii Division of Occupational Safety and Health were promulgated in September, 1972, and revised in January, 1974. These rules include: Regulations on inspections, citations, and proposed penalties (chapter 102); regulations for recording and reporting occupational injuries and illnesses (chapter 103); rules of practice for variances (chapter 104); regulations concerning administration witnesses and documents in private litigation (chapter 105); and regulations for promulgating, modifying, or revoking occupational safety and health standards (chapter 106).

(g) In accordance with 29 CFR 1952.313(c), as amended, the Hawaii

Management Information System was completed and in operation by December 31, 1975.

(h) In accordance with § 1902.34 of this chapter, the Hawaii occupational safety and health plan was certified, effective April 26, 1978 as having completed all developmental steps specified in the plan as approved on December 28, 1973, on or before December 31, 1976.

[39 FR 44203, Dec. 23, 1974, as amended at 39 FR 44752, Dec. 27, 1974; 40 FR 6336, Feb. 11, 1975; 41 FR 26218, June 25, 1976; 43 FR 5821, Feb. 10, 1978; 43 FR 19851, May 9, 1978. Redesignated at 49 FR 19192, May 4, 1984]

### § 1952.313 Final approval determination.

(a) In accordance with section 18(e) of the Act and procedures in 29 CFR part 1902, and after a determination that the State met the "fully effective" compliance staffing benchmarks established in response to a Court Order in *AFL-CIO v. Marshall*, (CA 74-406), and was satisfactorily providing reports to OSHA through participation in the Federal-State Unified Management Information System, the Assistant Secretary evaluated actual operations under the Hawaii State plan for a period of at least one year following certification of completion of developmental steps (May 9, 1978, 43 FR 19849). Based on the Evaluation Report for FY 1982 and available FY 1983 data, and after opportunity for public comment and an informal public hearing held on October 27, 1983, in Honolulu, Hawaii, the Assistant Secretary determined that in actual operations, Hawaii is at least as effective as the Federal program in providing safe and healthful employment and places of employment and meets the criteria for final State plan approval in section 18(e) of the Act and implementing regulations at 29 CFR part 1902. Accordingly, the Hawaii plan was granted final approval and concurrent Federal enforcement authority was relinquished under section 18(e) of the Act effective April 30, 1984.

(b) Except as otherwise noted, the plan which has received final approval covers all activities of employers and all places of employment in Hawaii. The plan does not cover maritime employment in the private sector; Federal government employers and employees;

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enforcement relating to any contractors or subcontractors on any Federal establishment where the land is determined to be exclusive Federal jurisdiction; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

(c) Hawaii is required: To maintain a State program which is at least as effective as operations under the Federal program; to submit plan supplements in accordance with 29 CFR part 1953; to allocate sufficient safety and health enforcement staff to meet the benchmarks for State staffing established by the U.S. Department of Labor, or any revisions to those benchmarks; and, to furnish such reports in such form as the Assistant Secretary may from time to time require.

[49 FR 19192, May 4, 1984, as amended at 65 FR 36627, June 9, 2000]

### § 1952.314 Level of Federal enforcement.

(a) As a result of the Assistant Secretary's determination granting final approval to the Hawaii plan under section 18(e) of the Act, effective April 30, 1984, occupational safety and health standards which have been promulgated under section 6 of the Act do not apply with respect to issues covered under the Hawaii plan. This determination also relinquishes concurrent Federal OSHA authority to issue citations for violation of such standards under sections 5(a)(2) and 9 of the Act; to conduct inspections and investigations under section 8 (except those necessary to conduct evaluation of the plan under section 18(f), and other inspections, investigations or proceedings necessary to carry out Federal responsibilities not specifically preempted by section 18(e)); to conduct enforcement proceedings in contested cases under section 10; to institute proceedings to correct imminent dangers under section 13; and to propose civil penalties or initiate criminal proceedings for violations of the Federal Act under section 17. The Assistant Secretary may retain jurisdiction under the above provisions in any proceeding commenced under section 9 or 10 before the effective date of the 18(e) determination.

(b) In accordance with section 18(e), final approval relinquishes Federal OSHA authority only with regard to occupational safety and health issues covered by the Hawaii plan. OSHA retains full authority over issues which are not subject to State enforcement under the plan. Thus, Federal OSHA retains its authority relative to safety and health in private sector maritime activities and will continue to enforce all provisions of the Act, rules or orders, and all Federal standards, current or future, specifically directed to maritime employment (29 CFR Part 1915, shipyard employment; Part 1917, marine terminals; Part 1918, longshoring; Part 1919, gear certification) as well as provisions of general industry and construction standards (29 CFR Parts 1910 and 1926) appropriate to hazards found in these employments. Federal jurisdiction also remains in effect with respect to Federal government employers and employees, enforcement relating to any contractors or subcontractors on any Federal establishment where the land is determined to be exclusive Federal jurisdiction; and the U.S. Postal Service (USPS), including USPS employees, and contract employees and contractor-operated facilities engaged in USPS mail operations.

(c) Federal authority under provisions of the Act not listed in section 18(e) is unaffected by final approval of the plan. Thus, for example, the Assistant Secretary retains his authority under section 11(c) of the Act with regard to complaints alleging discrimination against employees because of the exercise of any right afforded to the employee by the Act. The Assistant Secretary also retains his authority under section 6 of the Act to promulgate, modify or revoke occupational safety and health standards which address the working conditions of all employees, including those in States which have received an affirmative 18(e) determination, although such standards may not be Federally applied. In the event that the State's 18(e) status is subsequently withdrawn and Federal authority reinstated, all Federal standards, including any standards promulgated or modified during the 18(e) period, would be Federally enforceable in that State.